

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TERREL HOLMES,

Plaintiff,

v.

M. MUELLER,

Defendant.

Case No. 1:20-cv-00737-ADA-HBK (PC)

ORDER DENYING PLAINTIFF'S MOTION  
FOR APPOINTMENT OF COUNSEL

(Doc. No. 31)

Pending before the Court is Plaintiff's motion to appoint counsel. (Doc. No. 31).

Plaintiff, a prisoner, is proceeding pro se on his First Amended Civil Rights Complaint as screened under 28 U.S.C. § 1915A. (Doc. No. 13, 16). The Court granted Plaintiff's application to proceed in this action *in forma pauperis* in this action. (Doc. No. 4). Plaintiff seeks appointment counsel because he is indigent and has been unable to obtain a lawyer. (Doc. No. 31).

The United States Constitution does not require appointment of counsel in civil cases. *See Lewis v. Casey*, 518 U.S. 343, 354 (1996) (explaining *Bounds v. Smith*, 430 U.S. at 817, did not create a right to appointment of counsel in civil cases). Under 28 U.S.C. § 1915, this court has discretionary authority to appoint counsel for an indigent to commence, prosecute, or defend a civil action. *See* 28 U.S.C. § 1915(e)(1) (stating the court has authority to appoint counsel for people unable to afford counsel); *see also United States v. McQuade*, 519 F.2d 1180 (9th Cir.

1 1978) (addressing relevant standard of review for motions to appoint counsel in civil cases) (other  
2 citations omitted). However, motions to appoint counsel in civil cases are granted only in  
3 “exceptional circumstances.” *Id.* at 1181. The court may consider many factors to determine if  
4 exceptional circumstances warrant appointment of counsel including, but not limited to, proof of  
5 indigence, the likelihood of success on the merits, and the ability of the plaintiff to articulate his  
6 or her claims *pro se* in light of the complexity of the legal issues involved. *Id.*; *see also Rand v.*  
7 *Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *withdrawn in part on other grounds on reh’g en*  
8 *banc*, 154 F.2d 952 (9th Cir. 1998).

9 Plaintiff has not met his “burden of demonstrating exceptional circumstances.” *Jones v.*  
10 *Chen*, 2014 WL 12684497, at \*1 (E.D. Cal. Jan. 14, 2014). Plaintiff’s indigence does not qualify  
11 “as an exceptional circumstance in a prisoner civil rights case.” *Montano v. Solomon*, 2010 WL  
12 2403389, at \*2 (E.D. Cal. June 11, 2010); *Callender v. Ramm*, 2018 WL 6448536, at \*3 (E.D.  
13 Cal. Dec. 10, 2018). Plaintiff’s inability to find counsel is not “a proper factor for the Court to  
14 consider in determining whether to request counsel.” *Howard v. Hedgpeth*, 2010 WL 1641087, at  
15 \*2 (E.D. Cal. Apr. 20, 2010). Further, the Court does not find the issues are “so complex that due  
16 process violations will occur absent the presence of counsel.” *Bonin v. Vasquez*, 999 F.2d 425,  
17 428–29 (9th Cir. 1993).

18  
19 Dated: February 16, 2023

  
HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE

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